Editor's note: Reconsideration on remand from Under Secretary; decision vacated; case remanded to BLM -- See 83 IBLA 277 (Oct. 25, 1984)

CORINTH PARTNERSHIP

IBLA 83-1002 Decided March 28, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM 56747.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents-- Oil and Gas Leases: Applications: Drawings

   An offer submitted by a partner for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

APPEARANCES: Edward B. Poitevent II, Esq., and Cecily S. Henson, Esq., New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

The Corinth Partnership (Corinth) has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 29, 1983, rejecting the simultaneous oil and gas lease application drawn first in the April 1983 filing for parcel NM 222 (NM 56747). BLM found that lease forms and stipulations signed by one "Charlotte Wagner" on August 5, 1983, without further identification did not comport with 43 CFR 3102.4.

The regulation states:

> All applications, offers and requests for approval of an assignment shall be holographically (manually) signed in ink by the potential lessee or by anyone authorized to sign on behalf of the potential lessee. Documents signed by anyone other than the potential lessee shall be rendered in a manner to reveal the name of the potential lessee, the name of the signatory and their relationship. (Example: John Smith, agent for Mary Jones; or ABC

> Corporation, agent for Mary Jones by John Smith.) Machine or rubber stamped signatures shall not be used.

43 CFR 3102.4 (1982). 1/

Appellant argues that it need not have complied with 43 CFR 3102.4. It submits articles of partnership to show that the signatory was the partner authorized to sign on behalf of the partnership and points out that when the regulation lists examples where the relationship between signatory and potential lessee must be specified on the application or offer, all of the examples refer to agents. Therefore, appellant reasons, where a partner authorized to sign on behalf of the partnership, rather than an agent, signed the documents, further explanation on the documents is unnecessary. Appellant also argues that, by submitting the offer, Charlotte Wagner certified that she had legal authority to do so under 43 CFR 3102.5, since "submission * * * constitutes certification of compliance with the regulations of this group and the Act." In addition, BLM was free to request additional information under 43 CFR 3102.5. Finally, appellant asserts, "upon information and belief," that this New Mexico State Office action was inconsistent with those of other BLM state offices in like circumstances involving partnerships and is thus discriminatory, arbitrary, capricious, a denial of due process, and a deprivation of a property interest.

[1] Appellant argues that because Charlotte Wagner is the partner authorized to sign on behalf of Corinth Partnership, the potential lessee, the lease offer was not signed by "anyone other than the potential lessee" and therefore need not be rendered in a manner to reveal the relationship between the signatory and the potential lessee. We have held, in Hercules (A Partnership), 67 IBLA 151 (1982), that where a partnership's application refers to a qualifications file that lists the signatory as a partner authorized to sign on behalf of the partnership, the application has been rendered in a manner to reveal the relationship between the signatory and the applicant, even though the application itself does not reveal the relationship. See also Leonard Minerals Co., 74 IBLA 371 (1983). Where, however, there is no reference on the application to a qualifications file containing the authorization of a person to sign on behalf of the partnership and no indication on the face of the application that the signatory is such a person, we have affirmed the rejection of an offer. Feick Associates, 76 IBLA 292 (1983); United Ventures, 74 IBLA 31 (1983). 2/ It is not sufficient to demonstrate the relationship in documents filed on appeal because the offer cannot be cured. Id. at 33; Martin, Williams & Judson, 74 IBLA 342 (1983). Appellant's reading of the regulation is thus unpersuasive. The potential lessee

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1/ The Federal oil and gas leasing regulations were revised effective Aug. 22, 1983. See 48 FR 33648 (July 22, 1983). The quoted regulation was in effect when the circumstances of this case arose. The new version adds a requirement that the signatory date the offer and other documents and limits the use of qualification numbers for the purpose of indicating the relationship between the potential lessee and the signatory. 48 FR 33667 (July 22, 1983). Neither of these provisions is at issue here.

2/ United Ventures pointed out that although the regulation involved here, 43 CFR 3102.4, is not the same as in Hercules, supra, it is "similar in language and identical in purpose." 74 IBLA at 33.

is Corinth Partnership, a legal entity, not Charlotte Wagner. Since Corinth cannot manually sign, the offer signed by Charlotte Wagner was therefore signed by someone other than the potential lessee and the relationship between the signatory and that potential lessee must be indicated either on the face of the offer or by reference on the application to a qualifications file containing the information. There was neither such an indication nor such a reference.

Further, 43 CFR 3112.4-1(a) (1982), 3/ which is more specific and restrictive than the terms of 43 CFR 3102.4 (1982), provides that a lease offer filed under 43 CFR Subpart 3112 must bear the personal handwritten signature of the prospective lessee or his attorney-in-fact. If an attorney-in-fact signs for the offeror, a copy of the power of attorney which contains certain strict limitations on the agent must be filed with the lease offer. 43 CFR 3112.4-1(b). The purpose of the rigid requirements of 43 CFR 3112.4-1, as noted in the comments on the regulation change, is "to increase an applicant's involvement and reduce the influence of agents in the [simultaneous leasing] process." 45 FR 35159 (May 23, 1980). Perceived abuses sought to be eliminated included the securing of leases by agents without the knowledge of the lessee as well as the sale of lease interests without the knowledge of the lessee. 4/ See Clinkenbeard v. Central Southwest Oil Corp., 526 F.2d 649 (5th Cir. 1979) (detailing abuses by lease filing service); see generally United States v. Allen, 554 F.2d 398 (10th Cir. 1977). Although we now know, by virtue of the documents filed on appeal, that the lease offer was signed by a partner in the partnership making the offer, there was no way of knowing this from the lease offer signed by Charlotte Wagner filed with BLM.

On December 15, 1983, appellant filed a supplemental brief which discusses Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). In that decision, the U.S. Circuit Court of Appeals for the Tenth Circuit held that the failure of an applicant to date an application was a nonsubstantive error which did not constitute appropriate grounds for BLM to find that an application was detective. Appellant argues that:

> The Court's analysis [in Conway v. Watt, supra] supports Appellant's arguments in its Statement of Reasons in at least two particulars. First, in a situation like Charlotte Wagner's where no evidence exists that she is an unqualified applicant or has perpetrated fraud on the BLM, the Court found strict application of a regulation to be 'palpably arbitrary.' Second, if the Secretary believed that Mrs. Wagner was an unqualified applicant or was perpetrating fraud on the BLM, he could have required her to produce evidence of her authority to sign for Corinth Partnership,

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3/ Although the oil and gas leasing regulations have subsequently undergone extensive revision, the provisions of 43 CFR 3112.4-1 have been retained, as recodified, at 43 CFR 3112.6-1. 48 FR 33680 (July 22, 1983).

4/ Appellant's application discloses that a filing service had been used by appellant and the application was signed by "John C. Saunders," who listed himself as "Attorney-in-Fact." Accordingly, without an indication of the identity of Charlotte Wagner it would not be unreasonable for BLM to assume that she also was an "attorney-in-fact."

based on his powers under 43 C.F.R. § 3102.5. Mrs. Wagner was clearly a qualified lessee and she should not be allowed to suffer the hardship of rejection of her offer to lease for a simple error in signing the offer when all BLM had to do to allay any uncertainty was to request the Corinth Articles of Partnership.

We cannot agree that failure to indicate the relationship between signatory and the potential lessee on the offer falls within the narrow category of a nonsubstantive error. We have followed Conway where an application was simply undated, Amberex Corp., 78 IBLA 152 (1983) (see also Harvey Howard Trott, 79 IBLA 146 (1984)), and where the date was misstated, Richard W. Renwick (On Reconsideration), 78 IBLA 360 (1984). We have also indicated it would be applicable where an applicant has properly darkened the circles on Part B of the application but failed to fill in his name and address. Shaw Resources, Inc., 79 IBLA 153, 178-79, 91 I.D. ___ (1984). Where the simultaneous leasing system or the rights of other applicants would be subverted by characterizing an error as nonsubstantive, however, we may not do so. See Newman Partnership, 79 IBLA 281, 283-84 (1984); Marceann Killian, 79 IBLA 105, 107-08 (1984). As the discussion above indicates, 43 CFR 3102.4 and 3112.4-1 serve important functions in preserving the integrity of the system. It is incumbent on applicants and offerors to comply with such requirements because BLM cannot as a practical matter write or telephone every potentially qualified applicant or offeror to make sure that all errors were insignificant oversights. See Federal Energy Corp., 51 IBLA 144, 146-47 (1980). Simply writing the word "partner" after her name would have assured BLM that Charlotte Wagner was not an attorney-in-fact or other unqualified person.

Appellant's remaining arguments are unavailing. Since we do not question Charlotte Wagner's authority, it need not be bolstered by reference to 43 CFR 3102.5. We note only in passing that that regulation provides that "compliance" is defined in terms of the four statements contained in (a) through (d). Finally, whatever the practices of other BLM state offices may or may not be under similar circumstances, appellant has not been deprived of a property interest. Fen F. Tzeng, 68 IBLA 381, 386 (1982), and cases cited.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Will A. Irwin
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

ADMINISTRATIVE JUDGE ARNESS DISSENTING.

The decision of the New Mexico State Office to reject application NM 56747 should be reversed for several reasons. First, the specific regulation apparently applicable to this situation is 43 CFR 3112.4-1(a) (1982) recodified at 43 CFR 3112.6-1(a), which provides:

> (a) The lease agreement, consisting of a lease form approved by the Director, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the selected applicant if qualified for signing together with a request for payment of the first year's rental. Only the personal handwritten signature, in ink, of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, shall be accepted. The first year's rental shall be paid only by the applicant personally or his/her attorney-in-fact as described in paragraph (b) of this section. The signed lease agreement and rental payment shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease.

48 FR 33680 (July 22, 1983).

Corinth Partnership is shown by the record to be a partnership. On appeal, following rejection of the partnership's offer, Corinth filed a Copy of its articles of partnership showing the partnership is comprised of Charlotte Wagner, who signed on behalf of the partnership in this case, and six other persons, all of whom have a lesser interest in the partnership. Wagner is authorized to sign on behalf of the partnership. The majority opinion, in deciding BLM properly rejected Corinth's offer because it failed to reveal the relationship between Corinth and Charlotte Wagner, relies upon past Board decisions dealing with partnership offers in United Ventures, 74 IBLA 31 (1983), and Hercules (A Partnership), 67 IBLA 151 (1982).

In United Ventures, however, unlike this case, the defective signature was not offered by a general partner, but by an agent for the partnership who was not a partner. The opinion observed, 74 IBLA at 32 n.1, that.

> The first document [offered to show agency] is signed and dated Dec. 22, 1980, but authorizes Alan R. Rexius to represent Scipro, Ltd. The second document, origin and purpose unidentified, lists parties in interest of United Ventures and declares Alan R. Rexius as the authorized representative. However, no signatures granting that authority appear thereon. Although partners are generally deemed to be agents for the partnership in partnership matters, 68 C.J.S. Partnership § (1950), nowhere in the record is Alan R. Rexius identified and established as a partner.

By contrast, in the appeal now before the Board it is quite clear that Charlotte Wagner is the senior partner in Corinth Partnership.

In Hercules, the signature on the lease offer was made by a general partner, but was rejected nonetheless by BLM because the signature did not reveal the relationship of the signatory to the partnership. In that case, however, there existed in BLM records a qualifications file. This file contained information concerning the relationship between the signatory and the partnership (his "qualification" to act) which was held to satisfy the requirement of the regulation in effect in 1981 when the qualifications file was established. 43 CFR 3102.2-4 (1981). This regulation, 43 CFR 3102.2-4 (1981), provided that partnerships should file with BLM a list of information about the partnership, including a list of all general partners, which identified the persons authorized to act on behalf of the partnership.

The general rule established by 43 CFR 3102.4, the regulation upon which the majority opinion relies for its holding, includes examples of the type of person who is required to provide proof of relationship to the partnership. The specific example provided by the regulation is: "(Example: John Smith, agent for Mary Jones; or ABC Corporation, agent for Mary Jones by John Smith.)." 43 CFR 3102.4 (1982). It is this exemplified class of person that is required to furnish an explanation of her relation to the partnership. As appellant points out, this exemplified class is limited to agents outside the organization and does not include a general partner, such as Charlotte Wagner, who is authorized to sign on behalf of herself and her partners. Thus appellant reasons:

> [T]his regulation contemplates that offers to lease must be executed [i] by the lessee or someone authorized to sign for the lessee or [ii] an agent of the lessee. Since Charlotte Wagner, the Corinth partner authorized by the partnership's Articles of Partnership (see Exhibit "B" attached hereto) to execute leases on behalf of the partnership, is clearly a person "authorized to sign" leases on behalf of Corinth, the signature of Charlotte Wagner thus meets the requirements of 43 C.F.R. § 3102.4.
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> * * * Since these examples [in the regulation] involve situations only where the lease offer is being executed by an agent of the potential lessee rather than by the lessee, the language is inapplicable to the Corinth offer to lease. For instance, in both examples given in the regulation, Mary Jones is the potential lessee. In one, John Smith signs as her agent. In the second, ABC Corporation is the agent for Mary Jones, and John Smith signs for ABC Corporation. Importantly, ABC's agency relationship to Mary Jones is revealed, but John Smith's relationship (e.g. President, Vice President) to the corporation is not. These examples therefore indicate that §3102.4 is intended to apply only where a lessee fails to execute required documents itself, and instead has some other person or entity execute them. Noteworthy is the fact that where John Smith signed for the corporation, no explanation of his relationship to the corporation is necessary.

Appellant's Brief at 3-5.

It must be kept in mind that in this case the partnership was drawn with first priority and a lease was sent by BLM to Corinth and received and signed by Charlotte Wagner and returned. It was the signed lease form returned to BLM that triggered the rejection here. In that circumstance this appeal poses the same situation as confronted the Board in Irvin Wall, 69 IBLA 371 (1983), a case where the Board held that, to invalidate an otherwise good prior (over-the-counter) offer, there must be shown a valid reason why the offer should be considered defective. In Wall the Board noted the existence of numerous cases where minor technical errors had been used in past decisions to find an offer to lease defective and declined to follow the type of reasoning which would permit the perceived technical defect to void the lease offer. Under the Wall rationale the lease offer in this case can be considered defective only if it be shown that there was an affirmative regulatory requirement that a general partner sign, in addition to her own name, an explanatory statement setting out her authorization to sign for the partnership association of which she was a partner.

No such regulation existed at the time this offer was made. If BLM questioned the authority of Charlotte Wagner to sign on behalf of the partnership it should have asked her the reason for her action. See 43 CFR 3102.5. There is no assertion here that she was not authorized to sign or was not, in fact, a partner. Unless that were shown to be the case, or some other substantial defect should be made to appear in the application or offer made in this case, the lease should issue to Corinth, as the first drawn offeror.

See, in this connection, Conway v. Watt, 717 F.2d 512, 514 (10th Cir. 1983), a case cited by the majority opinion which also involved the simultaneous oil and gas program, where the court observed that it is generally contrary to the intent of Congress to impose hardship upon a lessee (i.e., to reject a first drawn offer) for a trivial or inadvertent error. In Conway the court held that failure to date a drawing entry card was a trivial error despite a considerable volume of Departmental decisions to the contrary. The court then refused to accord the usual deference to administrative interpretation of Departmental regulations, stating, 171 F.2d at 517, that:

> BLM staffers may request applicants to submit additional information to the BLM to demonstrate their qualifications. Section 3102.3 bestows broad discretion upon BLM employees. As the BLM stated in the Federal Register, "wide discretion is needed in order to insure compliance with the regulations and the state." [sic] 45 Fed. Reg. 35156, 35158 (May 23, 1980). Surely, the BLM cannot have it both ways. The amount of collusion potentially forestalled by strict reading of DECs is no greater than the collusion which might be occasioned by BLM staffers who abuse their discretion under section 3102.3. In any event, this drawing program is not to be a search for the slightest error so as to eliminate the first contestant and resurrect the second.

The regulation cited by Conway, 43 CFR 3102.3 (1980), was recodified at 43 CFR 3102.5 (1982) and is continued under the latest recodification. See 48 FR 33667 (July 22, 1983). The regulation now states, in part: "Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein shall upon demand submit additional information to show compliance with the regulations of this group and the act." 48 FR 33667.

It is therefore apparent, as construed by this Board in Wall, supra, and by the Federal court in Conway, supra, the regulations affecting simultaneous oil and gas leasing require a substantial reason to refuse to issue a lease to the first-drawn applicant. In ANR Production Co v. Watt, No. C83-375-K (D. Wyo. filed Jan. 11, 1984) (appeal pending), in language pertinent here, the court reasoned in a similar situation involving the identity of a lease application signatory:

> It is reasonable to presume that the requirement of revealing the relationship between the signatory and the applicant as well as the requirement of providing a qualification file number are for administrative purposes. They serve to ease the burden of processing and determining qualified applicants. However, in this case there was no burden on the BLM in processing plaintiff's application. BLM was familiar with the file and had no apparent problem determining the identity of the signatory.
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> As noted in the Conway case (supra), the BLM is given broad discretion in checking compliance with the qualification requirements. See 43 CFR § 3102.3. This Court will not remove that discretion under the pretense of strict compliance with the regulations. Those regulations are to assist the BLM, not to constrict it.

In this case, there is no substantial reason to reject the lease offer by Corinth, because there is in fact no known defect in the offer. There has been no specific violation of Departmental regulation by Corinth. A lease should therefore issue to the partnership or, if BLM still has doubts concerning the bona fides of the partnership, it should inquire concerning those questions which remain unresolved as required by 43 CFR 3102.5.

Franklin D. Arness
Administrative Judge